U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
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September 18, 2007

BY HAND

The Honorable William H. Pauley III
United States District Judge
Southern District of New York
Foley Square
New York, New York 10007

Re: United States v. Kareem Edwards
07 Cr. 719 (WHP)

Dear Judge Pauley:

The Government respectfully submits this letter in response to defendant Kareem Edwards' motion to suppress the physical evidence recovered by officers of the New York City Police Department ("NYPD") in connection with the defendant's arrest on July 6, 2007, for possession of a loaded firearm. Edwards' motion should be denied in its entirety in light of the evidence established at the September 4 and September 10, 2007 evidentiary hearing because, based on the totality of the circumstances, there was reasonable suspicion [i] to conduct a brief investigatory detention of the defendant based on the officers' belief that criminal activity had occurred or was about to occur; and [ii] to conduct a careful and limited search of the defendant's person and automobile based on the Officers' belief that the defendant was armed and dangerous.

The Evidence at the Hearing

At the evidentiary hearing, the Government called three witnesses: Detective Joseph Scialabba, Detective Nuruddin Abdurrahim, and Detective Dennis Estwick, all of the NYPD. The defense called no witnesses.

The Officers' testimony established the following: On July 6, 2007, shortly after 5:00 p.m., a confidential informant (the "CI") contacted Det. Scialabba about a shooting at 1160 East 229th Drive South, Bronx, New York ("1160 East 229"), which is part of the Edenwald Housing Projects. The CI informed Det. Scialabba that the shooter had gone into 1160 East 229 and was still inside that building. (Transcript dated September 4 and September 10, 2007 ("Tr."), at 6). In addition, the CI provided a description of the shooter: a male black with braids. (Id.).

The CI has been registered and approved by the NYPD and, over the past year, has provided reliable information that has served as bases for numerous search warrants and arrests. (Tr. 6-8). Detective Scialabba is in touch with, and has personally met, the CI. (Tr. 7-8).

After receiving the CI's call, Det. Scialabba and Det. Estwick went to 1160 East 229 to checkout the building and area. (Tr. 9; 96). The officers did a "vertical" -- i.e., a visual inspection of the stairwells and floors of a building -- of 1160 East 229 and knocked on the doors of several apartments, but did not find the gunman or other suspicious individuals. (Tr. 9-10; 96). While in the area, the officers conferred with other NYPD officers who had responded to the shooting and also spoke to individuals at the scene. (Tr. 10, 96; "Sprint Report" of 7/6/07 ("Sprint Report") (attached as Exhibit D to defendant's motion to suppress)). Thereafter, Det. Scialabba performed several computer searches relating to both 1160 East 229 and individuals who had previously been arrested for narcotics offenses in the area, and printed out several photographs of individuals who matched the CI's description of the possible shooter. (Tr. 11; 96-97).

Thereafter, members of the NYPD Bronx Narcotics Field Team (including Det. Scialabba, Det. Estwick, Det. Abdurrahim, Det. Velez, and Lt. Byrnes) assembled for a tactical meeting, during which the evening's "buy-and-bust" operation was discussed, in addition to the earlier shooting at 1160 East 229. (Id.) Det. Scialabba showed photo results of his computer searches to his teammates and provided them with the physical description that the CI had previously given him -- i.e., a male black with braids. (Tr. 11-12; 80). Following the meeting, the officers traveled to 1160 East 229 in unmarked SUVs, reaching the area around dusk. (Tr. 13-14). Det. Estwick., Det. Scialabba, Det. Abdurrahim (who was driving) rode together in the same SUV, which stood higher than an ordinary police car. (Tr. 14-15; 87; 104). Upon approaching East 229th Drive South -- or the "horseshoe" drive off East 229th Street (the "Horseshoe") -- the NYPD Evidence Collection Team was completing their investigation. (Id.).

The officers drove slowly along the Horseshoe, and observed an individual (whom the officers later determined to be the defendant Kareem Edwards) walking away from 1160 East 229 along the pedestrian path that abuts the area parking lot. (Tr. 16). The officers first observed Edwards when their vehicle was approximately between one-third and one-half of the way down East 229th Drive South, or after they had completed their rounding of the first corner of the Horseshoe. (Tr. 55; 99-100). At that

point, the officers were approximately 24 to 25 parking spaces away from the defendant. (Tr. 66). The officers continued to drive forward slowly, and the defendant was observed walking quickly toward the line of parked cars, with his head down, clutching a cloth that was concealing something. (Tr. 16; 20-21). The defendant held the cloth like a football. (Id.).

Edwards approached a car, which had been parked with its back wheels against the curb and its front wheels facing into the street. (Tr. 17; 63). He opened the car's driver's side door, and bent down and into the vehicle as if he were placing something on the driver's side floor. (Tr. 21; 57-58). The defendant then got into the car, and the officers pulled their SUV next to the defendant's car. (Tr. 17-18; 81-82; 100). All three officers got out of the SUV. Det. Estwick focused his attention on the approximately ten to eleven individuals standing in front of the building on the north side of the Horseshoe. (Tr. 101). Det. Scialabba and Det. Abdurrahim approached the defendant's car; Det. Scialabba went to the passenger's side and Det. Abdurrahim went to the driver's side. (Tr. 18; 82). The officers asked the defendant several questions. First, the officers asked about the ownership of the vehicle, to which the defendant gave conflicting answers. (Tr. 18; 84). Next, the officers asked the defendant for his license, which he produced. (Tr. 18; 84; 101). Det. Scialabba recognized the name on the license as related to a name relevant to one of the team's prior investigations. (Tr. 19). During this interaction, the defendant was evasive, and moved his arms around and looked over his shoulder. (Tr. 84).

The officers asked to the defendant to get out of his car and they performed a protective pat-down, which turned up nothing. (Tr. 19; 84). From the passenger-side of the car, Det. Scialabba went to the area where he saw Edward's bend down with the above-mentioned cloth. (Tr. 19). Det. Scialabba put his hand underneath the driver's side seat and felt the cloth, which had the outline and feel of a gun. (Tr. 19). Det. Scialabba pulled out the cloth (a ripped green towel) and found a loaded .45 caliber Llama semiautomatic pistol. (Tr. 19-20; 22). Det. Scialabba then yelled "hot lunch" (a coded reference for a firearm) to alert the other officers about the gun. (Tr. 22; 85; 102). After a brief struggle, the defendant was placed under arrest. (Tr. 23; 86-87; 102-103). Back at the precinct, the defendant stated something like "You got me with the hammer, it's no big deal." (Tr. 23; 103).

Applicable Law

Fourth Amendment law recognizes three types of interactions between government agents and private citizens: (i) consensual encounters, which require no justification; (ii) investigative detentions, which require "reasonable suspicion" to believe that criminal activity has occurred or is about to occur; and (iii) arrests, which require a showing of probable cause. United States v. Tehrani, 49 F.3d 54, 58 (2d Cir. 1995); United States v. Hooper, 935 F.2d 484, 490 (2d Cir. 1991).

A police officer may conduct a brief "investigative detention" or "Terry stop" by stopping a person to investigate possible criminal behavior, as long as at the time the officer effects the stop, the officer has "'reasonable suspicion' to believe that criminal activity has occurred or is about to occur." United States v. Tehrani, 49 F.3d 54, 58 (2d Cir. 1995) (citing United States v. Glover, 957 F.2d 1004, 1008 (2d Cir. 1992)); see also United States v. Elmore, 482 F.3d 172, 178 (2d Cir. 2007). Reasonable suspicion arises when law enforcement officers are "aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion." United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975).

"Reasonable suspicion" is measured by an objective test, Glover, 957 F.2d at 1010, and reviewing the circumstances as a whole, not as discrete and separate facts, United States v. Barlin, 686 F.2d 81, 86 (2d Cir. 1982). In assessing whether an officer's suspicion was objectively reasonable, a court must consider the "totality of the circumstances." United States v. Cortez, 449 U.S. 411, 417 (1981); see also United States v. Bayless, 201 F.3d 116, 133 (2d Cir. 2000). In that analysis, factors that by themselves suggest innocent conduct may add up to reasonable suspicion when viewed as a whole. See United States v. Arvizu, 534 U.S. 266, 274-75 (2002); see also United States v. Villegas, 928 F.2d 512, 516 (2d Cir. 1991) ("Conduct as consistent with innocence as with guilt may form the basis for an investigative stop where there is some indication of possible illicit activity.").

The test for reasonable suspicion is a "rather lenient" one, United States v. Santana, 485 F.2d 365, 368 (2d Cir. 1973), which the Second Circuit has described as "not a difficult one to satisfy," United States v. Oates, 560 F.2d 45, 63 (2d Cir. 1977). Under the "reasonable suspicion" standard, "the likelihood of criminal activity . . . falls considerably short of satisfying a preponderance of the evidence standard." Arvizu, 534 U.S. at 274. As the Supreme Court emphasized in Alabama v. White, 496

U.S. 325 (1990), "reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause [and] can arise from information that is less reliable than that required to show probable cause." Id. at 330.

Reasonable suspicion is measured from the objective perspective of a trained and experienced law enforcement officer. Cortez, 449 U.S. at 418; United States v. Forero-Rincon, 626 F.2d 218, 221-22 (2d Cir. 1980). "[T]he 'actual motivations of the individual officers involved' in the stop 'play no role' in the analysis." Holeman v. City of New London, 425 F.3d 184, 190 (2d Cir. 2005) (quoting Whren v. United States, 517 U.S. 806, 813 (1996)). The reasonable suspicion analysis "does not deal with hard certainties, but with probabilities," and properly takes into account that trained law enforcement agents may make observations and draw conclusions that go beyond the capacity of a lay person. Cortez, 449 U.S. at 418; Villegas, 928 F.2d at 517 (suspicion reasonable if appears suspect to trained observer); see also Ornelas v. United States, 517 U.S. 690, 699-700 (1996) (while ultimate review of reasonable suspicion determination is de novo, deference should be given to experience of police officers involved).

Reasonable suspicion may be based on a variety of factors, including an individual's presence in a high-crime neighborhood, "nervous, evasive behavior," and "unprovoked flight upon noticing the police." Illinois v. Wardlow, 528 U.S. 119, 124 (2000); see id. at 125 ("Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning."). In short, "the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." Id.

After stopping a suspect pursuant to reasonable suspicion, an officer is permitted to conduct a protective search for weapons if the officer has "reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." Terry, 392 U.S. 1, 27 (1968). The officer need not be absolutely certain that the suspect is armed; but rather, may conduct the protective search if a reasonably prudent man in the officer's position "would be warranted in the belief that his safety or that of others was in danger." Id.; see also United States v. Alexander, 907 F.2d 269, 272 (2d Cir. 1990) ("A law enforcement agent, faced with the possibility of danger, has a right to take reasonable steps to protect himself and an

obligation to ensure the safety of innocent bystanders, regardless of whether probable cause to arrest exists.").

Courts must also consider that often the police are acting in "a swiftly developing situation," United States v. Sharpe, 470 U.S. 675, 686 (1985), and "should not indulge in unrealistic second-guessing as to the means law enforcement officers . . . employ to conduct their investigations." Glover, 957 F.2d at 1010-11 (quotations omitted). In part for that reason, there are no "hard and fast rules for evaluating the conduct of law enforcement agents conducting investigative stops." Alexander, 907 F.2d at 272. Rather the touchstone remains reasonableness in all the circumstances, and thus even "[t]he fact that an investigative stop might, in the abstract, have been accomplished by some less intrusive means does not, in and of itself, render a stop unreasonable." Alexander, 907 F.2d at 273 (citing Sharpe, 470 U.S. at 686-87). Instead, so long as the failure to pursue the less intrusive alternative is itself reasonable, the stop remains valid. Id.

Discussion

A. The Officers Had Reasonable Suspicion Sufficient to Justify an Investigative Stop of Edwards

Edwards first contends that the officers lacked reasonable suspicion sufficient to justify an investigative stop. In particular, Edwards contends that he was stopped and questioned several hours after gunshots were heard in the neighborhood and without a particularized description of the shooter. (Defendant's Motion to Suppression dated August 22, 2007 ("Def. Br.") at 4-5). In contending that the officers' stop of Edwards was unsupported by reasonable suspicion, Edwards relies heavily on Florida v. J.L., 529 U.S. 266 (2000). Although Edwards' comparison of his case to J.L. has some surface appeal, J.L. is easily distinguishable.

In J.L., the Supreme Court held that an anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officer's stop and frisk of that person. J.L., 529 U.S. at 268. In that case, an anonymous caller told the police that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." Id. There was absolutely no information provided as to the caller's identity - the caller did not give his name, there was no recording of the call, and the caller's number was not recorded. Id. Arriving at the bus stop, the police saw three black males, including J.L., a juvenile who was wearing a plaid shirt. Id.

The police did not see a firearm nor did they observe J.L. or any of the other men making any suspicious movements. Id. An officer frisked J.L. and found a gun in his pocket. Id.

In upholding the Florida Supreme Court's invalidation of the stop and frisk, the Supreme Court held that an anonymous tip "lacking indicia of reliability" cannot justify an investigative stop, without additional information. Id. at 274. The Court observed that "[u]nlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, . . . an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." Id. at 270 (citation omitted; emphasis supplied). The Court recognized, however, that "there are situations in which an anonymous tip, suitably corroborated, exhibits sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." Id. (internal quotation and citation omitted). For example, predictive information about a person's movements could indicate reliability. Id. at 271.

Edwards' case differs from that of the defendant in J.L. in several respects, and ample evidence supports the officers conducting a Terry stop and frisk of the defendant:

- Unlike, J.L., the officers did not rely principally on an anonymous tip. Here, the officers had a specific and particularized description of the shooter from a reliable and dependable CI, with whom the officers had frequent communications including personal meetings. (Tr. 6-8). Indeed, the CI has been deemed reliable enough by the NYPD that the CI has been formally registered after approval by a commanding officer. (Id.);

- Both the description and location provided by the CI were corroborated by the police dispatcher's description of the shooter: a male black carrying a firearm into 1160 East 229. (Tr. 6; Sprint Report);

- The officers corroborated the description of the shooter through their communications with officers from 47th Precinct and neighbors. Tr. 6-8; 10; 96; see United States v. Valez, 796 F.2d 24, 28 (2d Cir. 1986), cert. denied, 479 U.S. 1067 (1987) ("The [collective knowledge doctrine] that permits courts to assess probable cause to arrest by looking at the collective knowledge of the police force-instead of simply looking at the knowledge of the arresting officer . . . exists because, in light of the complexity of modern police

work, the arresting officer cannot always be aware of every aspect of an investigation.");

- Edwards was seen walking quickly away from 1160 East 229 -- i.e., the same building into which the shooter was reported and suspected to have hidden -- immediately after the police had departed the scene. (Tr. 6, 15; Sprint Report);

- Edwards was seen carrying a towel that appeared to be concealing a heavy object. He was walking quickly with his head down. (Tr. 16-21);

- The officers saw Edwards lean into the car towards the driver's seat while clutching the towel-wrapped object. (Tr. 21; 57-58); and

- Edwards' actions upon seeing the police gave rise to additional suspicion. Edwards began acting nervously and evasively, moving his arms around and looking over his shoulder, when being questioned by the officers, unlike the defendant in J.L., who "made no threatening or otherwise unusual movements." J.L., 529 U.S. at 268.

Significantly, unlike J.L., the CI in this case was known and reliable, and had provided previous, actionable information. "[A] face-to-face informant must . . . be thought more reliable than an anonymous telephone tipster, for the former runs the greater risk that he may be held accountable if his information proves false." United States v. Walker, 7 F.3d 26, 30 (2d Cir. 1993) (quoting United States v. Salazar, 945 F.2d 47, 50-51 (2d Cir. 1991)); United States v. Bold, 19 F.3d 99, 102 (2d Cir. 1994). Even if the face-to-face informant's motives may be unknown, "his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case." Illinois v. Gates, 462 U.S. at 234; United States v. Salazar, 945 F.2d 47, 51 (2d Cir. 1991) ("[A] face-to-face informant must, as a general matter, be thought more reliable than an anonymous telephone tipster, for the former runs the greater risk that he may be held accountable if his information proves false.").

United States v. Elmore, 482 F.3d 172 (2d Cir. 2007), is particularly helpful. In Elmore, the Second Circuit recently concluded that, where a known informant has be found to be reliable from past experience, "no corroboration will be required

to support reasonable suspicion." Id. at 181.[1] There, the Second Circuit considered the Government's interlocutory appeal after the district court suppressed the firearm found in Elmore's car. The Norwalk Police received a telephone call from a woman (who identified herself as "Dorothy") claiming to be a close friend of Elmore, and provided her home and cell phone numbers. Id. at 175. "Dorothy" told the police that Elmore was in possession of weapons and might harm somebody. The officers had never talked to or used any information provided by Dorothy, though they did talk to her approximately four times that day. Id. The police subsequently learned Dorothy's last name, and took several steps to corroborate both her identity and the information she provided. Id. at 176. Based on the information provided, the police circulated a memo and photography of Elmore. Id. at 176-77. Two days later, two officers spotted Elmore in his car and pulled him over. Id. at 177. They asked him and another woman to step out of the vehicle. The passenger compartment to the vehicle was examined, and a .38 caliber firearm was recovered from underneath the driver's seat. Id. Elmore was placed under arrest and he subsequently moved to suppress, relying upon Florida v. J.L. and Alabama v. White, 496 U.S. 325 (1990). The district court suppressed the evidence, finding that "the tip lacked the necessary indicia of reliability to establish reasonable suspicion because [the officers were] not

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[1] The Second Circuit, in analogous situations, has also found that anonymous tips coupled with some corroboration can support a finding of reasonable suspicion to support a Terry stop. See Bold, 19 F.3d 99. In Bold, the Second Circuit upheld a stop based almost entirely on an anonymous 911 call informing police that the occupants of a particular vehicle parked at a specified location possessed a gun. The Court held that police were justified in making a stop when they found the car in the location specified, parked in a suspicious, isolated location, and found that it had darkened windows. 19 F.3d at 103. Bold especially emphasized that the tip related to possession of a gun, which creates an "element of imminent danger", and where waiting to obtain more information "might have fatal consequences." 19 F.3d at 104. The Bold Court thus held that "[w]here the tip concerns an individual with a gun, the totality of the circumstances test for determining reasonable suspicion should include consideration of the possibility of the possession of the gun, and the government's need for a prompt investigation." Id. See also United States v. Walker, 7 F.3d at 31 (anonymous tip of suspect with guns, partially confirmed by police, created reasonable suspicion justifying stop).

able to corroborate sufficiently the information she gave." Id. at 177-78.

The Second Circuit reversed. Tellingly, the Court opined that the level of corroboration of required is directly tied to the type and reliability of an informant:

> Under the totality of the circumstances approach to assessing probable cause and reasonable suspicion mandated by Gates and White, informants do not all fall into neat categories of known or anonymous. Instead, it is useful to think of known reliability and corroboration as a sliding scale. Where the informant is known from past practice to be reliable, as in Williams, no corroboration will be required to support reasonable suspicion. Where the informant is completely anonymous, as in White, a significant amount of corroboration will be required. However, when the informant is only partially known (i.e., her identity and reliability are not verified, but neither is she completely anonymous), a lesser degree of corroboration may be sufficient to establish reasonable suspicion. This approach is consistent with the totality of the circumstance inquiry mandated by Gates and White, as well as the Supreme Court's characterization of Terry as providing an "intermediate response" for investigating criminal activity. Williams, 407 U.S. at 145.

Id. at 180-81 (emphasis supplied). Here, like Elmore, the CI is not only known -- having been authenticated by, and registered with, the NYPD -- but also has provided reliable information in the past: "I've worked with this informant for many months, almost about a year, and I have numerous search warrants and arrests because of information that the informant gives me." (Tr. 6-7). Furthermore, unlike Elmore, the information provided by the CI in the instant case was acted upon within a matter of hours, as opposed to after a few days had passed. And the facts and circumstances of the defendant's conduct only add to the officer's finding of reasonable suspicion.

Under the law of this Circuit, these facts -- without more -- support reasonableness. Holeman v. City of New London, 425 F.3d 184, 192 (2d Cir. 2005) ("In the middle of the night, the police were in a high crime area with a convicted narcotics felon who was acting suspiciously. These facts alone suffice to support reasonableness."); United States v. Paulino, 850 F.2d 93, 98 (2d Cir. 1988); see also Arvizu, 534 U.S. at 274 ("The likelihood of criminal activity need not rise to the level

required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard."). It is true, that (considered in isolation) a person's mere presence late at night in a high crime area does not constitute reasonable suspicion. Here, however, the officers were not reasonably suspicious merely because of the hour; rather, they reacted to the aggregate facts that support the reasonable suspicion analysis.

Accordingly, based on [1] the earlier shooting at 1160 East 229, [2] the reliable CI's description of the shooter and his location, [3] the timing of defendant's departure from 1160 East 229, i.e., immediately after the police had left the scene, and [4] the defendant's actions and demeanor, the officers had reasonable suspicion to suspect that the defendant was engaged in criminal activity and (therefore) to justify an investigative stop of Edwards.

B. The Officers Had Reasonable Suspicion Sufficient to Justify a Security Sweep of Edwards' Car

Edwards next contends that, even if the Terry stop were lawful, the subsequent frisk and search of his car were not. (Def. Br. 6-8). Specifically, Edwards argues that there was nothing about "his behavior that objectively and reasonably suggested he was armed and presently dangerous." (Def. Br. 6). He then goes on to suggest that search of the car did not meet the "automobile exception" (that "allows police to search a car without a warrant if they have probable cause to believe it contains contraband") or Michigan v. Long, 463 U.S. 1032 (1983). Edwards arguments are belied by the facts and the case law. (Id. 7-8).

A limited search for weapons, without a warrant and without probable cause, is permissible in connection with a lawful custodial interrogation that does not rise to the level of an arrest, see, e.g., Terry v. Ohio, 392 U.S. 1, 21 (1968), on the rationale that "if a suspect is 'dangerous,' he is no less dangerous simply because he is not arrested," Long, 463 U.S. at 1050. Further, the suspect need not actually be dangerous to validate such a limited-purpose search, so long as the officer has a reasonable belief that the suspect poses a danger and may have a weapon within his reach. See McCardle v. Haddad, 131 F.3d 43, 48 (2d Cir. 1997) (quoting Long, 463 U.S. at 1049).

In Long, police approached a man who had driven his car into a ditch and who appeared to be under the influence of an intoxicant. As the man moved to reenter the car from the roadside, police spotted a knife on the floor-board. The

officers stopped the man, subjected him to a patdown search, and then inspected the interior of the vehicle for other weapons. During the search of the passenger compartment, the police discovered an open pouch containing marijuana and seized it. The Long court upheld the validity of the search and seizure under Terry.

The Court held that, in the context of a roadside encounter

> protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger. . . . The search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.

Id. at 1049 (quoting Terry, 392 U.S. at 21). "Thus, where there has been a Terry stop of an automobile, the officer may 'take steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him,' provided that the officer 'has a reasonable belief "that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others.'" McCardle v. Haddad, 131 F.3d 43, 48 (2d Cir. 1997) (quoting Long, 463 U.S. at 1047 (in turn quoting Terry, 392 U.S. at 24)). "Of course, the protective search of the vehicle, being justified solely by the danger that weapons stored there could be used against the officers or bystanders, must be 'limited to those areas in which a weapon may be placed or hidden.'" Minn. v. Dickerson, 508 U.S. 366, 374 (1993) (quoting Long, 463 U.S. at 1049).

Long simply extends logic of Terry to the automobile context. At base, Long stands for the proposition that, where officers have a specific and articulable suspicion that an individual may be potentially dangerous, they are justified not only in conducting a protective frisk of his person (Terry), but also "the passenger compartment of automobile, limited to those areas in which a weapon may be placed or hidden" (Long). Long, 43 U.S. at 1049. A suspect's presence in a car does not -- and should not -- impair the police's ability to conduct a protective frisk to ensure their and others' safety. This is especially true in a car-stop situation, which this Circuit has found to be

"especially hazardous and [to] support[] the need for additional safeguards." United States v. Alexander, 907 F.2d 269, 273 (2d Cir. 1990).

Here, as stated supra, ample evidence supported the officers conducting a Terry stop and frisk of the defendant's person. The fact that the defendant happened to enter a car after these facts were objectively apparent to the officers does not affect the reasonable suspicion analysis. By defendant's own admission, the officers made it to the defendant's car just after he got into it. (Affidavit of Kareem Edwards dated August 22, 2007 ¶ 4). The passage of those few seconds during which Edwards made it into his automobile did not lessen his potential dangerousness; rather, it only enhanced the level of danger. See Alexander, 907 F.2d at 273. Those facts that gave rise to the officers' specific and articulable belief that Edwards was dangerous -- i.e., Edwards' matching the CI's description of the shooter at 1160 East 229, his carrying of a concealed heavy object, and his nervous and evasive demeanor -- remain true through the entirety of the officers' interaction with the defendant.

Lastly, even if there were any question about the propriety of a security sweep of the car in this case, it cannot be argued that officers searched any more of the car than was permitted. Consistent with the watchwords of Long, Det. Scialabba performed a limited pat-down of the area where he saw the defendant might have placed the towel-wrapped object -- under the driver's side seat. (Tr. 19-20); see Long (permitting a search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden). Det. Scialabba felt the outside of the cloth, and made out a hard object in the shape of a gun (Tr. 19-20). It was only then that the cloth was pulled from underneath the driver's seat and the .45 caliber Llama semiautomatic pistol was discovered. (Tr. 19-20).

Conclusion

For the reasons set forth above, defendant's motion to suppress the physical evidence should be denied.

Respectfully submitted,

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